

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: James F. Hainfeld

Serial Number: 10/658,609

Filing Date: September 8, 2003

Title: *Kit For Detecting HER-2/NEU Gene By
Site-Specific Metal Deposition*

Group Art Unit: 1657

Examiner: Ralph J. Gitomer

CONFIRMATION NO: 2535

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT
AND
APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 CFR §1.705

Sir or Madam:

Applicant(s) hereby requests(s) that the Office reconsider the Patent Term Adjustment and adjust the Patent Term Adjustment determination for this application.

☐

This request is made AFTER the date of the Notice of Allowance;

☐

This request is made ON or BEFORE payment of the issue fee.

--OR--

☐

This request is made after issuance of the patent and is accompanied by a Certificate of Correction.

--OR--

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This request is made within TWO months from the date of issuance of the patent.

The statement of facts involved specifying the correct Patent Term Adjustment and the bases for the adjustment are as follows:

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37 C.F.R. §1.702(a)(1). The Office is required to mail at least one of a notification under 35 U.S.C. §132 or a notice of allowance under 35 U.S.C. §151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. §111(a) or fulfilled the requirements of 35 U.S.C. §371 in an international application:

The date on which the application was filed: _____

The 14 month date on which the Office was to issue an Office Action or Notice of Allowance _____

The actual date on which the first Office Action or Notice of Allowance was mailed _____

The difference for which Applicant should received credit _____

The Office credited Applicant ___ days, when it should have credited ___ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(a)(2). The Office is required to respond to a reply under 35 U.S.C. §132 or to an appeal taken under 35 U.S.C. § 134 not later than four months after the date on which the reply was filed or appeal was taken:

☐ Reply

The date of applicant's response to notice of rejection: _____

4 months from the date of response to the notice of rejection _____

The actual date on which the Office replied _____

The difference for which Applicant should received credit _____

The Office credited Applicant ___ days, when it should have credited ___ days, as illustrated above.

☐ Appeal

The date on which Applicant's filed completed Appeal Brief: _____

4 months from the date of the appeal brief _____

The actual date on which the Examiner's Answer or Notice of Allowance was mailed _____

The difference for which Applicant should received credit _____

The Office credited Applicant ___ days, when it should have credited ___ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(a)(3). The Office is required act on an application not later than four months after the date of a decision by the BPAI, or a decision by a Federal court where at least one allowable claim remains in the application:

The date of decision allowing at least one claim by the BPAI or Federal Court _____

4 months from the date of decision _____

The actual date on which the Office replied _____

The difference for which Applicant should received credit _____

The Office credited Applicant ___ days, when it should have credited ___ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(a)(3). The Office is required to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. §151:

The date applicant paid issue fee: _____

4 months from the date of issue fee payment _____

The actual date on which the patent issued _____

The difference for which Applicant should received credit _____

The Office credited Applicant ____ days, when it should have credited ____ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(b). The Office is required to issue a patent within three years from the actual filing date of the application:

The date on which the application was filed _____

3 years from the date the application was filed _____

The date upon which the patent issued _____

The difference for which Applicant should received credit _____

The Office credited Applicant ____ days, when it should have credited ____ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(c). The Office is required to adjust the term of an original patent if the issuance was delayed due to interference proceedings.

The date upon which the interference was declared _____

The date upon which the interference ended _____

The difference for which Applicant should received credit _____

The Office credited Applicant ____ days, when it should have credited ____ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(d). The Office is required to adjust the term of an original patent if the issuance of the patent was delayed due to the application being placed under a secrecy order.

The date upon which the secrecy order was issued _____

The date upon which the secrecy order was removed _____

The difference for which Applicant should received credit _____

The Office credited Applicant ____ days, when it should have credited ____ days, as illustrated above.

- ☐ 37 C.F.R. §1.702(e). The Office is required to adjust the term of the original patent if the issuance was delayed to review by the BPAI or Federal court, if the decision reversed an adverse determination of patentability.

The date upon which the application was appealed to the BPAI or Federal Court _____

The date upon which the BPAI or Federal Court issued a decision reversing an adverse determination of patentability _____

The difference for which Applicant should received credit _____

The Office credited Applicant ____ days, when it should have credited ____ days, as illustrated above.

- ☒ 37 C.F.R. §1.703. The Office is entitled to adjust the sum of the patent term adjustment for Applicant delay. However, Applicant believes that the Office incorrectly deducted patent term adjustment.

The Office erroneously deducted 19 days for Applicant delay based on an Amendment after Allowance under 37 C.F.R. §1.312. Applicant filed the Amendment electronically on December 22, 2006. The Office responded to the Amendment on January 9, 2007. The number of days between the period of December 22, 2006 and January 9, 2007 is 18 days, not 19 days. Applicant requests that this deduction be removed and the patent term be restored 1 day.

- ☐ 37 C.F.R. §1.704. The Office is entitled to reduce the period of patent term adjustment for Applicant delay:

Applicant's Information Disclosure Statement dated _____ was accompanied by a statement under 1.704(d) that each item of information contained in the statement was first cited in a communication from a foreign patent office in a counterpart application less than 30 days prior to filing the information disclosure statement.

Thus, applicant should be credited _____ days which were erroneously deducted from the patent term for applicant's delay.

- ☒ *Fee Authorization.* The Commissioner is hereby authorized to charge the petition fee under 37 C.F.R. §1.18(e) of \$0.00 and charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 23-2415 (Docket No.: 6270-705.501).

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI

Dated: April 10, 2007

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